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 10 City of Pittsburg, Chief of Police Aaron Baker,
 11 Capt. William Zbacnik, Lt. Michael Barbanica,
 12 Lt. William "Brian" Addington, Lt. Wade Derby

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA

15 RON HUPPERT and JAVIER SALGADO,

16 Plaintiffs,

17 v.

18 CITY OF PITTSBURG, CHIEF OF POLICE
 19 AARON BAKER, CAPT. WILLIAM ZBACNIK,
 20 LT. MICHAEL BARBANICA, LT. WILLIAM
 21 "BRIAN" ADDINGTON, LT. WADE DERBY,
 22 and DOES 1-40,

23 Defendants.

Case No.: C 05-01433 JL

**SEPARATE STATEMENT OF
 UNDISPUTED MATERIAL FACTS IN
 SUPPORT OF DEFENDANTS CITY OF
 PITTSBURG, AARON BAKER,
 WILLIAM ZBACNIK, MICHAEL
 BARBANICA, WILLIAM ADDINGTON
 AND WADE DERBY'S MOTION FOR
 SUMMARY JUDGMENT OR, IN THE
 ALTERNATIVE, MOTION FOR
 SUMMARY ADJUDICATION OF
 CLAIMS ASSERTED BY PLAINTIFF
 HUPPERT**

DATE: August 2, 2006
 TIME: 9:30 a.m.
 DEPT: Courtroom F, 15th Floor

Complaint Filed: April 7, 2005

24 Defendants City of Pittsburg, Chief of Police Aaron Baker, William Zbacnik, Michael
 25 Barbanica, William Addington, and Wade Derby submit the following statement of
 26 undisputed material facts, together with references to supporting evidence, in support of
 27 their motion for summary judgment or, in the alternative, summary adjudication of claims
 28 asserted by Plaintiff Ron Huppert.

<u>UNDISPUTED MATERIAL FACTS</u>	<u>SUPPORTING EVIDENCE</u>
1. Huppert was initially employed by the City of Pittsburgh as a police officer on January 25, 1991.	1. Declaration of Marc Fox ("Fox Decl.") ¶ 2 NOT DISPUTED BY PLAINTIFF
2. Huppert served as a police officer during his entire period of employment with the City of Pittsburgh.	2. Fox Decl. ¶ 2; Declaration of Kathy Mount ("Mount Decl."), Exhibit C (Huppert's Rev. Supp. Resp. to Req. for Admissions, No. 9) NOT DISPUTED BY PLAINTIFF
3. On August 27, 2004, Huppert was placed off work by his physician and thereafter did not return to work for the City.	3. Fox Decl. ¶ 3 DISPUTED BY PLAINTIFF
4. From August 2004 to April 2005, Huppert was paid full salary and benefits by the City pursuant to Labor Code section 4850.	4. Fox Decl. ¶ 4 NOT DISPUTED BY PLAINTIFF
5. In a written determination dated April 8, 2005, the City Manager determined, on behalf of the City, that Huppert was incapacitated for the performance of his duties as a police officer.	5. Fox Decl. ¶ 5, Exhibit A NOT DISPUTED BY PLAINTIFF
6. Huppert began receiving disability pension payments retroactive to April 7, 2005, in the monthly amount of \$3358.25. He continues to receive industrial disability retirement benefits from CalPERS, which are tax-free.	6. Fox Decl. ¶ 6; Mount Decl., Exhibit A (Huppert dep. Tr. 400:15-401:1); Exhibit C (Huppert's Rev. Supp. Resp. to Req. for Admissions, No. 1) NOT DISPUTED BY PLAINTIFF
7. Huppert's disability retirement will continue for as long as he is disabled from performing the duties of police officer.	7. Mount Decl., Exhibit C (Huppert's Rev. Supp. Resp. to Req. for Admissions, No. 2) NOT DISPUTED BY PLAINTIFF
8. Huppert's physician has stated that Huppert's inability to perform the duties of a police officer is a permanent condition.	8. Mount Decl., Exhibit C (Huppert's Rev. Supp. Resp. to Req. for Admissions, No. 4) DISPUTED BY PLAINTIFF

9. Huppert is currently physically incapable of performing the duties of police officer.	9. Mount Decl., Exhibit A (Huppert Depo. Tr. 307:23-308:1); Ex. C (Huppert's Rev. Supp. Resp. to Req. for Admissions, No. 3) NOT DISPUTED BY PLAINTIFF
10. Huppert's father is Austrian and his mother is Panamanian. Huppert speaks both German and some Spanish.	10. Mount Decl., Exhibit A (Huppert Depo. Tr. 227:8-228:7) NOT DISPUTED BY PLAINTIFF
11. During the time that Huppert was employed by the City, neither Chief Baker nor Captain Zbacnik were aware that he was of Hispanic or Latin descent.	11. Declaration of Aaron Baker ("Baker Decl.") ¶ 3; Declaration of William Zbacnik ("Zbacnik Decl.") ¶ 8.; Mount Decl., Exhibit A (Huppert Depo. Tr. 161:14-25) DISPUTED BY PLAINTIFF
12. During the period Huppert was employed by the City of Pittsburg, he was never personally subjected to derogatory comments which were based on his ethnicity or any ethnic slurs.	12. Mount Decl., Exhibit A (Huppert Depo. Tr. 199:6-15; 196:16-22; 171:16-25; 169:7-22) DISPUTED BY PLAINTIFF
13. In 1996, Zbacnik assigned Huppert to investigate a carjacking incident.	13. Zbacnik Decl. ¶ 4, Mount Decl., Exhibit A (Huppert Depo. Tr. 366:25-367: 2) NOT DISPUTED BY PLAINTIFF
14. On or about August 28, 1996, Huppert provided a memo to Zbacnik in connection with the carjacking investigation in which Huppert reported a citizen's complaint about Sergeant Kevin Keeler.	14. Zbacnik Decl. 4, Exhibit A; Mount Decl., Exhibit A (Huppert Depo. Tr. 365:7-366: 5) NOT DISPUTED BY PLAINTIFF
15. In September 1996, Defendant Baker was assigned by Chief Casey to conduct an investigation into allegations that Huppert failed to report to management racial slurs made by Sergeant Kevin Keeler.	15. Baker Decl. ¶ 4,5, Exhibit A. NOT DISPUTED BY PLAINTIFF

16. On or about November 14, 1996, Chief Baker issued a nondisciplinary "letter of advisement" to Huppert regarding his failure to report alleged racial slurs made by Sergeant Kevin Keeler.	16. Baker Decl. ¶ 5, Exhibit A NOT DISPUTED BY PLAINTIFF
17. In response to that letter of advisement, Huppert sent Chief Baker a memo, dated November 19, 1996, in which he disputed statements in the letter of advisement but did not claim that he ever complained to management that Sergeant Keeler had made racial slurs.	17. Baker Decl. ¶ 6, Exhibit B NOT DISPUTED BY PLAINTIFF
18. Huppert has never come forward to Chief Baker or any other member of police department management with a complaint of discrimination or retaliation, either related to himself or anyone else, while he was actually working for the City.	18. Baker Decl. ¶ 7; Mount Decl., Exhibit A (Huppert Dep. Tr. 500:25-501:24) DISPUTED BY PLAINTIFF
19. In 1996, Huppert was assigned, as part of his duties as a police officer, to assist the District Attorney in an investigation into alleged stealing and kickbacks at the City's Public Works Department. All reports and information Huppert provided to the Police Department regarding that investigation were pursuant to his official responsibilities as a police officer.	19. Zbacnik Decl. ¶ 3; Baker Decl. ¶ 9; Mount Decl., Exhibit A (Huppert Dep. Tr. 27:1-20; 127:19-24) NOT DISPUTED BY PLAINTIFF
20. In or about September - October 2001, Chief Baker assigned Huppert to investigate allegations of wrongdoing by police officers at the City golf course. All reports and information Huppert provided to the Police Chief and City Manager regarding that investigation were pursuant to his official responsibilities as a police officer.	20. Baker Decl. ¶ 8; Mount Decl., Exhibit A (Huppert Depo. Tr. 242:2-14) NOT DISPUTED BY PLAINTIFF
21. In October 2001, Huppert submitted reports of the findings in connection with the golf course investigation to Chief Baker.	21. Baker Decl. ¶ 8; Exhibits C, D, E NOT DISPUTED BY PLAINTIFF
22. In or about early 2004, Chief Baker, Captain Zbacnik and other members of the Police Department were subpoenaed to testify before the Contra Costa County Civil Grand	22. Baker Decl. ¶ 10; Zbacnik ¶ 5 NOT DISPUTED BY PLAINTIFF

1	Jury regarding operations of Police Department, including hiring and selection processes. Both the Chief and Zbacnik testified before the Grand Jury on this occasion. At least ten other members of the police department (including police officers, sergeants, captains and non-sworn personnel) were subpoenaed to testify as well.	
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7	23. On February 18, 2004, Huppert testified before the Grand Jury regarding conduct in the Police Department, pursuant to subpoena. In doing so, he was acting pursuant to his official responsibilities as a police officer. His testimony is secret.	23. Mount Decl., Exhibit A (Huppert Depo. Tr. 207:22-208:13) NOT DISPUTED BY PLAINTIFF
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10	24. Before this lawsuit was initiated, Chief Baker was not aware that Huppert had testified before the Grand Jury in 2004 regarding Police Department issues.	24. Baker Decl. ¶ 10 DISPUTED BY PLAINTIFF
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13	25. Zbacnik was never aware that Huppert testified before the grand jury regarding misconduct in the police department.	25. Zbacnik Decl. ¶ 6 DISPUTED BY PLAINTIFF
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15	26. Neither Baker nor Zbacnik have ever been informed of the substance of any such Grand Jury testimony by Huppert.	26. Baker Decl. ¶ 10; Zbacnik Decl. ¶ 6 NOT DISPUTED BY PLAINTIFF
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18	27. During the time Huppert was employed by the City, neither Chief Baker nor Captain Zbacnik were ever aware that Huppert had cooperated with outside law enforcement agencies in any investigations into allegations of misconduct at the Pittsburgh Police Department.	27. Baker Decl. ¶ 11; Zbacnik Decl. ¶ 7 DISPUTED BY PLAINTIFF
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23	28. In or about 2004, Chief Baker was informed by Lieutenant Derby that Huppert had asked to be transferred from the gang unit to the investigations unit.	28. Baker Decl. ¶ 12 DISPUTED BY PLAINTIFF
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25	29. Chief Baker made the decision to transfer Huppert from gang investigations to identity theft, fraud and forgery investigations. The Chief believed the Police Department needed Huppert's expertise in handling these issues. The Chief did not view this	29. Baker Decl. ¶ 12 DISPUTED BY PLAINTIFF
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1	transfer as having an adverse effect on Huppert's work conditions.	
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3	30. During his period of employment with the City, Huppert has never been subjected to disciplinary action, never demoted, and never suffered a loss of pay or benefits	30. Mount Decl., Exhibit A (Huppert Depo. Tr. 548:17-549:3; 549:19-550:11); Fox Decl. ¶ 3
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5		DISPUTED BY PLAINTIFF
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7	31. Huppert admits that the City is immune from a common law action for negligence.	31. Mount Decl. ¶ 4; Exhibit C (Huppert's Rev. Supp. Resp. to Req. for Admissions, No. 8)
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9		NOT DISPUTED BY PLAINTIFF
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11	32. Huppert admits that the City is immune from a common law action for intentional infliction of emotional distress.	32. Mount Decl. ¶ 4; Exhibit C (Huppert's Rev. Supp. Resp. to Req. for Admissions, No. 7)
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13		NOT DISPUTED BY PLAINTIFF

14 Dated: June 28, 2006

MEYERS, NAVE, RIBACK, SILVER & WILSON

16 By /S/ KATHY E. MOUNT 06/28/2006
 17 Kathy E. Mount
 Attorneys for Defendants

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